

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

JERRY SELLERS, et al.

PLAINTIFFS

vs.

No. 2:01CV48-D-B

FIRST FAMILY FINANCIAL  
SERVICES, et al.

DEFENDANTS

OPINION

Presently before the court is the Plaintiffs' motion to remand this cause to the Circuit Court of Bolivar County, Mississippi. Upon due consideration, the court finds that the motion should be granted and this cause remanded to state court for ultimate resolution.

*A. Factual Background*

The Plaintiffs in this action are twenty-one individuals who separately entered into various loan and insurance agreements with the Defendants.

The Plaintiffs filed suit in the Circuit Court of Bolivar County, Mississippi, on February 25, 2001, alleging that the Defendants' conduct in connection with the subject loan and insurance transactions renders them liable under various state law causes of action including fraudulent misrepresentation and negligence. The Defendants removed the action to this court on March 7, 2001, on the basis of bankruptcy removal jurisdiction as set forth in 28 U.S.C. § 1334 and § 1452. Subsequently, the Plaintiffs motioned the court to remand this matter to state court.

*B. Standard for Remand*

The Defendants' Notice of Removal asserts that this case is removable pursuant to 28 U.S.C. §1334(b) and 28 U.S.C. §1452(a). 28 U.S.C. § 1334(b) provides:

Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. §1334(b). In construing the scope of 28 U.S.C. §1334(b), the Fifth Circuit has made clear that federal district courts have original jurisdiction of claims that are at least "related to" a bankruptcy case; further, a party may remove such claims from state court to federal court. In re Wood, 825 F.2d 90, 93 (5<sup>th</sup> Cir. 1987); 28 U.S.C. §1452.

A proceeding is related to a bankruptcy if the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy. Wood, 825 F.2d at 93; In re Walker, 51 F.3d 562, 569 (5<sup>th</sup> Cir. 1995). More specifically, a proceeding is deemed to be related to a bankruptcy if the proceeding's outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively), and in any way impact upon the handling and administration of the bankruptcy estate. Walker, 51 F.3d at 569. For federal jurisdiction to attach, therefore, the anticipated outcome of the action must both (1) alter the rights, obligations, and choices of action of the debtor, and (2) have an effect on the administration of the estate. In re Bass, 171 F.3d 1016, 1022 (5<sup>th</sup> Cir. 1999). The Fifth Circuit has also made clear that district courts have broad power to abstain from hearing cases, even if they are related to a bankruptcy, whenever appropriate "in the interest of justice, or in the interest of comity with State courts or respect for State law." Wood, 825 F.2d at 93; 28 U.S.C. §1334(c)(1); 28 U.S.C. §1452(b).

### *C. Discussion*

The Defendants assert that removal is proper because several of the Plaintiffs' claims are related to Chapter 7 and Chapter 13 bankruptcy cases that those Plaintiffs separately filed at various times in the Northern and Southern Districts of Mississippi. All of the subject bankruptcy cases, however, have been closed and discharged, most of them several years ago.

Because all of the subject bankruptcy cases have been closed, the court finds that there is no bankruptcy removal jurisdiction. No bankruptcy case exists to which the present case now might be said to relate. See Hignite v. American Gen. Life & Accident Ins. Co., 142 F. Supp. 2d 785, 788-89 (N.D. Miss. 2001) (remanding state court claim after entry of final decree in bankruptcy); Rand v.

Empire Funding Corp., 132 F. Supp. 2d 497, 501 (S.D. Miss. 2000) (same); Blakeley v. United Cable Sys., 105 F. Supp. 2d 574, 580-81 (S.D. Miss. 2000). In other words, there is currently no estate being administered in bankruptcy to which the instant case relates, as is required for "related to" jurisdiction to attach. Wood, 825 F.2d at 93; Rand, 132 F. Supp. 2d at 501. Therefore, the court finds no basis for federal jurisdiction pursuant to 28 U.S.C. § 1334(b).

The court finds, therefore, that the Defendants' asserted ground for removal is without merit, and this case must be remanded to state court for final adjudication. As such, the Plaintiffs' motion to remand shall be granted.

A separate order in accordance with this opinion shall issue this day.

This the \_\_\_\_ day of October 2001.

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Chief Judge

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ORDER

Pursuant to an opinion issued this day, it is hereby ORDERED that

- (1) the Plaintiffs' motion to remand (docket entry 4) is GRANTED;
- (2) this cause is hereby REMANDED to the Circuit Court of Bolivar County, Mississippi;  
and
- (3) ruling upon the remaining pending motions (docket entries 3 and 16) is hereby  
RESERVED for the state court upon remand.

SO ORDERED, this the \_\_\_\_ day of October 2001.

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Chief Judge